1943

File No. Boroughs II/43

Legal Department

B **BRANCH**

Subject

Rules and Notifications Under the Bombay Municipal Boroughs Act 1925

File No. Boroughs II/43

Gen. 194 e.

273 B

R.I.No.4296 dated 25-3-1943.

Submitted with reference to the A(E)'s minute on pp. 18-19 ante. It is proposed to amend rule 5(a) of the Terminal Tax Rules of the Ahmedabad Municipality, as shown on p.9 ante. The question for consideration is whether the proposed amendment of rule 5(a) widens the scope of the existing rule.

2. The existing rule 5(a) inter alia exempts all goods for bonafide personal use and not for sale, from payment of the terminal tax. The proposed amendment mainly seeks to substitute the words "and not intended to derive directly or indirectly any profit or rent therefrom" for the words "and not for sale", The existing rule in so far as it exempts all goods for bonafide personal use manifestly appears to exclude goods from which it is intended to dervive profit kor rent. The expression "and not for sale" also excludes the idea of deriving profit. It would therefore appear that the proposed amendment does not widen the scope of the rules nor does the addition of the of the words "as determined by the Standing Committee" at the end of rule 5(a). In the circumstances as observed by the A(E), the amendment is redundant. However, in view of the provisions of sub-section (2) of section 73 of the Bombay Municipal Boroughts Act,1925, inserted by the Adptation Order it till be desirable not to touch rule 5(a), although the proposed amendment may make the rule more clear.

Sd/S.W.Dhurandhar.

14/4

S.S. Although it is true that the existing rule 5(a) exempted from terminal 'all goods for bona fide personal use and not for sale', but ddd not expressly refer to goods "not for hire", the words"for bona fide personal use" precluded all intention of deriving directly.....

directly or indirectly any profit or rent from the goods. The existing Rule therefore exempted from terminal tax only those goods which were xxxx brought for bona fide personal use of the person. As observed by A(E) at p.19 ante, therefore both the proposed amendments make the intention clearer and are not open to any legal objection.

Id/- K.M.C.
16/4

P.A.

The view ~~taken~~ taken by A(E) in his note dated 22-3-43 at pp.18-19 ante that the proposed rule (p. 9 ante) does not ~~xxxx~~ widen the scope of the tax is correct.

Id/- S.L.C.
20/4

D.S.

I agree

Id/- N.K.D.
21/4

R.L.A.Id/P.N.M.
24/4

Office of the R.L.A.

The view taken by A(E) in his note dated 22nd March 1943 at pages 18-19 ante that the proposed rule (page 9 ante) does not widen the scope of the tax is correct.

Id/-P.N.M.
26/4
Remembrancer of Legal Affairs.

U.R. to G.D.No.3079, dated the 27th April 1943.

EKN.14/7

Office of the R.L.-A.

Rules at page 23 ante :- These rules purport to - prescribe the duties of district health officers appointed by the District Local Board or Government. Such rules can be made under the Bombay Local Boards Act, 1923, but it does not appear that any model rules can be made by Government under that Act. Under section 119 of the Bombay Local Boards Act, 1923, every District Local Board has power to appoint such officers and servants as it deems necessary and proper to maintain for the efficient execution of its duties. Under the same section, the District Local Board has to prepare and sanction a schedule of the staff to be so maintained setting forth interalia their respective duties, Under section 133 (h) of the Act it is true, the Provincial Government is empowered to make rules generally for the guidance of Local Boards and Government officers in all matters connected with the administration of the Act and not therein specially provided for. Under this section Government can frame rules laying down the duties of district health officers for the guidance of the District Local Boards which the Boards will have to follow. The draft rules at pages 13-23 purport to prescribe the duties of health officers. but before they are made it will be necessary to see that the health officers can carry out their duties effectively and consistently with the Act. On scrutiny of the draft rules it appears that, in order to enable the health officers to discharge their duties effectively and consistently with the Act it would be necessary to delegate to them powers under the relevant provisions of the Act. For instance, rule 2 of the draft rules prescribes that the health officer shall organise and control the Sanitary work of the whole area under his charge. Rule 11 provides that he shall supervise

and.....

control the sanitary arrangements of lodging houses etc. Rule 27 gives him power to select sites for latrines, bore holes etc., to design.- better type of village houses and to provide for improving conditions in general in regard to light, ventilation etc. Now under section 37(2) of the Act the right to perform the duties and exercise the powers of the District Local Boards in regard to matters of public health and sanitation is vested in the public Next Health Committee and unless the Committee delegates its powers in regard to the above matters to the health officer it will not be possible for him to cayyy out the duties imposed on him by the rules. The same difficulty will arise if powers such as those under sections 52,54,58 of the Act are not delegated. It is therefore necessary, before proceeding further with these rules, to consider the question of delegation of powers under the relevant section of the Act to the health officers.

2. Rules at pages 39-41 ante: Anent these rules, there is no provision either in the Bombay District Municipal Act, 1901, or the Bombay Municipal Boroughs Act, 1925, enabling Government to make rules for the guidance of Municipalities. If any model rules aremade by Government in this behalf, there would be no legal sanction behind the same. It is true that the Municipalities can themselves make rules under those Acts prescribing the duties of health officers (see section 46(b) (ii) of the District Municipal Act and section 58(c) of the Bombay Municipal Boroughts Act). But before the rules are made it will first be necessary to consider whether the health officers can be properly discharge their duties without delegation of powers under the relevant sections of the Acts.

3. Moreover, in framing the rules, it will be necessary to examine generally the by-laws which may beenxxxxxx made by the Local Boards Act,1923,and section 48 and 61 of the Bombay District Municipal Act, 1901, and the Bombay Municipal Boroughs Act,1925,respectively,with a view to determining the duties of health officers consistently with the by-laws.

4. Before proceeding further with the rules, ~~xxxxxx

Id/P.H.M.

24/6

Remembrancer of Legal Affairs.

U.R. to G.O.No.4460,dated the 25th June 1943.

EKN.13/9/

Office of the R.L.A.

The proposed rules are in supersession of all the previous rules on the subject and as such the Municipality should have published the exemption clause in question for inviting objections and then submitted it to Government for sanction as required by section 75 of the Act. Under section 76 of the Act however Government is given power to sanction the rules submitted by a Municipality under section 75 subject to such modification not involving an increase in the amount of the tax to be imposed as it deems fit. As the proposed clause exempts certain vehicles and animals from the levy of toll, it does not involve any increase in the amount of the tax to be imposed. There would therefore be no objection to Government sanctioning the rules with the addition of the proposed clause.

Id/-
P.N.M.
26/7

Remembrancer of Legal Affairs.

U.R. to C.M.No.5136, dated the 27-7-43.

EKN.13/7/